KRISHNA COCONUT CO. & ANR.

v.

EAST GODAVARI COCONUT & TOBACCO MARKET COMMITTEE

October 27, 1966

[K. SUBBA RAO, C. J., M. HIDAYATULLAH, S. M. SIKRI, R. S. BACHAWAT AND J. M. SHELAT, JJ.]

Madras Commercial Crops Market Act, 1933, *ss.* 2(1)(*a*), *and* 11(1)—*Goods declared under s.* 2(1)(*a*) *as commercial crops—levy of fee under s.* 11(1) *on goods "bought and sold" in notified area—whether referred to single transaction of purchase and corresponding sale—or applied to subsequent sale by purchaser—whether object of the Act to be considered—whether levy valid.*

By a notification in June 1949, the State Government, in exercise of a power under s. 2(1)(a) of the Madras Commerical Crops Market Act, 1933, declared coconuts and copra to be 'commercial crops' within the meaning of the Act. The respondent Market Committee levied in respect of the declared commerical crops, a fee on the goods 'bought and sold' within the notified area under s. 11(1) of the Act, read with Rule 28(1) of the Rules made under the Act. The appellants filed various suits contesting the levy on the ground that they sold coconuts and copra to customers outside the notified area and in some cases outside the State; consequently, they sought refund of the fees collected by the respondent committee.

The suits filed were tried together and the trial Judge held that the levy, though called a "fee", was really a "tax", and that the Committee was only empowered to impose such tax when the goods were bought and sold within the notified area. He therefore passed decrees in all the suits for refund of the fees collected.

The first appeal by the respondent Committee was dismissed by the Sub-Judge who further held that the fee in substance being a tax, such tax on sales completed outside the State would also offend Art. 286 of the Constitution. However, a second appeal to the High Court was allowed on the view that the transactions which were the subject-matter of the levy under Section 11(1) were transactions consisting of the purchase of the goods by the appellants and the corresponding sales to them by the producers and not the subsequent sales effected by the appellants to their customers outside the notified area or the States; therefore the transactions on which the said fee was levied were effected and completed inside the notified area and fell within the expression "bought and sold" in section 11(1).

In the appeal before this court it was contended on behalf of the appellants that the transactions effected by them consisted in their purchasing the goods and stopped at the stage of goods "bought" so that no fee could be levied in the absence of the other ingredient, *i.e.*, sale within the notified area.

HELD : The construction placed on s. 11(1) by the High Court was correct and the respondent Committee had therefore rightly charged the fee. [983 B]

A The words "bought and sold" used in s. 11(1) aim at those transactions whereunder a dealer buys from a producer who brings to the market his goods for sale. The transaction aimed at must be viewed in the sense in which the legislature intended it to be viewed, that is, as one transaction resulting in buying on the one hand and selling on the other. Such a construction is commendable because it is not only in consonance with the words used in s. 11(1) but is consistent with the object of the Act as expressed through its various provisions, *i.e.*, to prevent the mischief of B exploitation of producers of commercial crops such as coconuts and copra and to see that such producers got a fair price for their goods. [982 A-B, E-F]

Kutti Koya v. *State of Madras* A.I.R. 1954 Mad. 621; *Satyanarayana and Venkataraju Firm* v. *Godavari Market Committee* A.I.R. 1959 Andh. Pra. 398; *M.C.V.S. Arunachala Nadar* v. *The State of Madras* [1959] Suppl. 1 S.C.R. 92; *Louis Dreyfus & Co.* v. *South Arcot Groundnut* C *Market Committee* A.I.R. 1945 Mad. 383; referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 858 to 861 of 1964.

Appeals by special leave from the judgment and order of the Andhra Pradesh High Court in Second Appeals Nos. 720 and 724 D to 726 of 1957.

C.B. Agarwala and *T. V. R. Tatachari,* for the appellants (in all the appeals).

P. Ram Reddy and *K. R. Sharma* for the respondent (in all the appeals.) E

The Judgment of the Court was delivered by

Shelat, J. All these four appeals by special leave raise a common question regarding interpretation of section 11(1) of the Madras Commercial Crops Market Act, XX of 1933 and Rule 28 of the Rules made thereunder and therefore can be disposed F of by a common judgment.

The Act was originally enacted by the Madras Legislature. It was a law in force immediately before the constitution of the State of Andhra Pradesh and governed the territories now forming part of that State. By virtue of Andhra Pradesh Act of 1953 and G the Adaptation of Laws Order passed on November 1, 1953 byth e State Government of Andhra Pradesh it became applicable to the newly formed State of Andhra Pradesh. By a Notification dated June 27, 1949 the then Government of Madras, in exercise of the power conferred on it by section 2(1)(a), declared coconuts and copra to be commercial crops. Under section 4 of the Act, the H State Government also declared the District of East Godavari as the "notified area" for purposes of the Act in respect of coconuts and copra. By a further notification dated December 5, 1950 issued under section 4(a) of the Act it established a Market Com-

mittee at Rajahmundry for the said notified area. The said Market Committee levied the following fees, *viz.*, (1) a licence fee under s. 5(1) of the Act read with Rule 28(3); (2) a licence fee for storage, wharfage etc., under section 5(3) read with Rule 28(3); (3) a registration fee under s. 18 read with Rule 37; (4) a fee on the said goods bought and sold within the notified area and under s. 11(1) read with Rule 28(1); and (5) a fee under the same section on consignments of coconut oil.

Contesting the levy of fees under items 2 to 5 as being illegal on the ground that they sold coconuts and copra to customers outside the notified area and in some cases outside the State, the appellants filed various suits in the court of the District Munsif, Amalapuram for refund of the said fees collected by the said Committee at different times. The Market Committee resisted the said suits claiming that the aforesaid provisions conferred power upon it to levy the said fees and that the said levy was valid and legal. The said suits were tried together and the District Munsif by his judgment dated October 17, 1955, *inter alia*, held that the levy under section 11(1) read with Rule 28(1) though called a "fee" was really a "tax", that the said provisions empowered the Committee to impose the said tax only when the said goods were bought and sold within the notified area, that the sales effected by the appellants were to customers outside the said area and in some cases outside the State, that the Committee had no power to levy and collect the said fees and therefore the appellants were entitled to refund of the said fees and accordingly passed decrees in all the suits. In appeals by the Committee, the Subordinate Judge, Amalapuram, held that though the appellants purchased the said goods within the notified area they exported them to their customers outside the notified area and outside the State and relying upon the decision in *Kutti Koya* v. *State of Madras*(1) he held that though section 11(1) called the said levy as fee it was in substance a tax and that such a tax being on sales completed at the places of their customers outside the State offended Art. 286 of the Constitution and was therefore illegal. The Subordinate Judge, except for deleting the relief granted in respect of licence fee under s. 5(3) of the Act, dismissed the appeals and confirmed the judgment and decree of the Trial Court. The Market Committee thereupon filed Second Appeals in the High Court of Andhra Pradesh. Before the High Court the controversy centred round the question of fee under s. 11(1) only. By its common judgment dated November 8, 1961 the High Court relying upon the judgment of a Division Bench of that Court in *Satyanarayana and Venkataraju Firm* v. *Godavari Market Committee*(2) held that the word "fee" in section 11(1) was in fact a fee and not a tax. The Division Bench also held that the said goods were pur-

(1) A.I.R. 1954 Mad. 621. (2) A.I.R. 1959 Andh. Pradesh 398.

A chased by the appellants from producers or petty dealers within the notified area and then sold by them to customers outside the said area or the State, that the transactions which were the subject-matter of the levy under section 11(1) were transactions consisting of purchase of the said goods by the appellants and the corresponding sales to them by the producers and petty dealers and B not the subsequent sales effected by them to their customers outside the notified area or the State, that therefore the transactions on which the said fee was levied were effected and completed inside the notified area and fell within the expression "bought and sold" in section 11(1) and therefore the Market Committee rightly levied the said fee on those transactions. In the result, the Division Bench C allowed the appeals and dismissed the appellants' suits. It is this judgment and decree against which these appeals are directed.

The preamble of the Act states that the Act was passed for making provisions for better regulation of buying and selling of and the establishment of markets for commercial crops. As stated in *M.C.V.S. Arunachala Nadar* v. *The State of Madras*(1), the Act D was the result of long exploratory investigation by experts in the field, conceived and enacted to regulate the buying and selling of commercial crops to provide suitable and regulated markets, to eliminate middlemen and bring face to face the producer and the buyer so that they meet on equal terms thereby eradicating or at any rate reducing the scope for exploitation of the producers. It E therefore provided a machinery for regulating trade by providing a common place where facilities would be furnished by way of space, buildings and storage accommodation, and where market practices would be regularised and market charges clearly defined and unwarranted ones prohibited, where correct weighment would be ensured by licensed weighmen and all weights would be checked and stamped, where payment on hand would be ensured, where F provision would be made for settlement of disputes, where daily prevailing prices would be made available to the grower and reliable market information provided regarding arrivals, stocks, prices etc., and where quality standards would be fixed when necessary and contract forms standardized for purchase and sale. The result of the implementation of the Act would be thus to give reasonable G facilities to the growers of commercial crops ensuring proper price for their commodities.

Section 4(a) (1) provides for the formation of a market committee for enforcing the provisions of the Act and the Rules and by-laws framed thereunder. Sub-section (2) lays down that the Committee shall establish in the notified area such number of markets H providing such facilities, as the State Government may from time to time direct, for purchase and sale of commercial crops. Section 5

(1) [1959] Suppl. 1 S.C.R. 92.

prohibits any person to set up, establish or use, continue or allow to be continued any place within the notified area for the purchase or sale of commercial crops except under a licence and in accordance with the conditions thereof. The Market Committee, however, can exempt from the provisions of this sub-section any person who carries on the business of purchasing or selling any commercial crop in quantities not exceeding those prescribed by the Rules. It also exempts from the provisions of this section a person selling a commercial crop which has been grown by him or a co-operative society selling a commercial crop which has been grown by any of its members and also a person purchasing for his private use a commercial crop in quantities not exceeding those prescribed by the rules. Section 6 provides that every market committee shall consist of such number of members not exceeding twelve as may be fixed by the State Government and provides for representatives of licencees under section 5 and buyers, sellers and buyers and sellers registered under the Rules prescribed in that behalf. Section 11(1) with which we are concerned in these appeals reads:

> "The Market Committee shall, subject to such rules as may be made in this behalf, levy fees on the notified commercial crop or crops bought and sold in the notified area at such rates as it may determine."

The Explanation to sub-section (1) provides that all notified commercial crops leaving a notified area shall, unless the contrary is proved, be presumed to be bought and sold within such area. Sub-section 2 provides that the fee chargeable under sub-section(1) shall be paid by the purchaser of the commercial crop concerned provided that where such a purchaser cannot be identified the fee shall be paid by the seller. Section 12 provides that all monies received by a market committee shall be paid into a fund and all expenditure incurred by the market committee shall be defrayed out of the said fund. The expenditure which the committee can incur is for purposes set out in section 13 which incidentally reflect the object and purpose of the Act. Section 18 empowers the State Government to make rules including rules for licence fee under section, 5, the registration fee and the prohibition of buying and selling of commercial crops in the notified area by persons not so registered and the fee to be levied on commercial crops bought and sold in the notified area. Rule 28 lays down the maximum fee leviable on commercial crops under section 11(1) as also the maximum fee payable for licences and registration. Rule 28-A provides that the fees referred to in sub-rule (1), that is, "fees" under section 11(1), shall not be levied more than once on a commercial crop in a notified area. These provisions clearly show the policy of safeguarding the interests of the producers and of guaranteeing to them

A reasonable return for the crops they would bring to sell without being exploited.

Mr. Agarwala raised the following contentions: (1) that the fee charged by the Market Committee under s.11(1) was on sales effected by the appellants with their customers, some of whom were admittedly outside the notified area and the rest outside the State; B (2) that that was the footing on which the parties proceeded with the suits but that case was given up in the High Court and the High Court was in error in permitting the Committee to shift its case and argue that the fee was levied not on those sales but on transactions of purchase entered into by the appellants with the producers and other petty dealers.

C It is true that in para 3 of their plaint the appellants averred that their business activities consisted of buying coconuts and copra in East Godavari District and selling them to customers outside the notified area and even the State and that those sales were completed at the respective places of those customers. The appellants' case therefore was that in respect of these sales with customers D some of whom were outside the notified area and the rest outside the State, the levy of fee was in the former case beyond the ken of s. 11(1) and in the latter case repugnant to Art. 286 of the Constitution. The written statement of the respondent committee denied these allegations. The Committee asserted that both the purchases and sales took place in the notified area and that though the fee E levied by it was on sales by the appellants and though delivery of the said goods thereunder took place outside the notified area the sales in respect thereof were made within the notified area and therefore the question of the levy under section 11(1) being repugnant to Art. 286 of the Constitution did not arise. Besides these pleadings Mr. Agarwala drew our attention to certain notices of demand and circulars issued by the Committee in which it was stated that the F said fee was being levied on goods exported outside East Godavari District and that the traders were liable to pay it both on coconuts exported to outsiders and also consumed internally. That presumably was stated because if the goods were "bought and sold" within the notified area, even if they were subsequently exported outside, section 11(1) would apply. The practice followed by the appellants G and not denied by the Committee was that they used to despatch these goods by rail to their customers. Railway receipts and hundies were then sent to their bankers at the destination and railway receipts were delivered to the customers on their honouring the hundies Thus the goods were delivered outside the notified area and the sales effected by the appellants to their customers were also completed at places outside the notified area and in some cases H outside the State.

On these facts the District Munsif held that property in the goods having passed at destination, sales took place outside the

notified area and therefore the fee charged by the Committee was illegal as section 11(1) permitted such a levy only on goods bought and sold within the notified area. On appeal by the Committee, the Subordinate Judge held that the said fee was a tax, that it was a tax on sales outside the notified area and the State and was not therefore warranted under section 11(1) and was repugnant to Art. 286. It seems that in both the courts, the real issue was lost sight of, *viz.*, whether the goods in respect of which the fee under s.11(1) was levied were goods "bought and sold" within the notified area as envisaged by the section.

In the High Court however the questions convassed were : (1) whether the fee provided in section 11(1) was a fee or a tax and (2) even if it was a fee whether the Committee had the power to levy it in respect of goods sold by the appellants outside the notified area. As already stated the Trial Judge and the Subordinate Judge had proceeded on the footing that the said fee was levied on sales entered into by the appellants with their customers who undoubtedly were outside the notified area. But the real question that ought to have been dealt with by the Trial Judge and on appeal by the Subordinate Judge was not whether the appellant's sales were to customers outside the notified area or the State but whether the fee which was levied was valid. The question of the validity of the levy entailed another question, *viz.*, whether the levy was on transactions effected by the appellants before they sold those goods to their customers. Were the appellants entitled to a refund of the fees levied on them under s. 11 (1)?, was the principal question in the suits. To decide that question it was necessary for the court to go into the question whether the fee was charged on the sales by the appellants or on the transactions made between them and those from whom they purchased the goods in question. Since neither the Trial Court nor the Subordinate Judge had gone into that question, it was necessary for the High Court to go into it not only to do justice to the parties but also because that was the real issue arising in the suits and was the crux of the litigation. There was therefore no question of the High Court allowing the respondent-Committee to make out a new case. The question from the very inception was whether the Committee was competent to levy the fee in question under section 11(1). To answer that question the court necessarily had to enquire on which transactions could the said fee be levied under section 11(1) and whether it was rightly levied by the Committee. The High Court answered these questions by holding that it was levied on the transactions effected by the appellants with those from whom they bought the said goods, that section 11(1) dealt with those transactions and was not therefore concerned with the subsequent sales entered into by the appellants with their customers outside the notified area. Since, according to the High Court, those transactions were admittedly effected within the noti-

A fied area the levy was valid and warranted under s. 11(1). In our view the High Court approached the question from a correct angle and therefore there was no question of its having allowed the Committee to change its case or make out a new case.

That being the position, the next question is whether the Committee could levy fee under section 11(1) on the transactions effected by the appellants before they sold those goods to their customers. Mr. Agarwala's contention was that the fee levied under section 11(1) could only be in respect of goods "bought and sold" and not in respect of transactions where goods were only "bought" or only "sold". According to him it is only when a person bought goods and sold those identical goods within the notified area that the fee under section 11(1) could be levied. According to him, the transactions effected by the appellants consisted in their purchasing the said goods; they stopped at the stage of goods "bought". Therefore, the other ingredient for a valid levy of the fee not being present the fee levied in the present case was not in accordance with the requirements of section 11(1) and was unwarranted. This contention raises the question as to the meaning of the words "bought and sold" in section 11(1). At first sight they would appear to be susceptible of three meanings; *viz.*, (1) that they mean duality of transactions where the same person buys goods and sells those identical goods in the notified area; (2) that they mean "bought" or "sold" the conjunctive "and" meaning in the context of the sub-section the disjunctive "or" and (3) that they apply to a transaction of purchase as the concept of purchase includes a corresponding sale. When a person buys an article from another person, that other person at the same time sells him that article and it is in that sense that section 11(1) uses the words "bought and sold." The incidence of the fee under section 11(1) is on the goods thus "bought and sold". This last interpretation was favoured by the High Court of Madras in *Louis Dreyfus & Co.* v. *South Arcot Groundnut Market Committee*[1] which has been accepted by the High Court in the present case.

If the construction commended to us for acceptance by Mr. Agarwala were to be correct, *viz.*, that the appellant's transactions stopped at the stage of goods "bought", they would not be transactions in respect of goods "bought and sold". If the fee was levied on sales effected by the appellants with their customers its levy would not be valid under section 11(1) and would also be repugnant to Art. 286 where goods were delivered outside the State. But it is a well settled rule of construction that the court should endeavour as far as possible to construe a statute in such a manner that the construction results in validity rather than its invalidity and gives effect to the

(1) A.I.R. 1945 Mad. 383.

manifest intention of the legislature enacting that statute. The object in passing the Act was to prevent the mischief of exploitation of producers of commercial crops such as coconuts and copra and to see that such producers got a fair price for their goods. The mischief to prevent which the Act was enacted was the exploitation of these producers by middlemen and those buying goods from them and therefore the Act provided facilities such as market place, place for storage, correct weighment etc., so that the producers and his purchasers come face to face in a regulated and controlled market and a fair price was obtained by them. If the construction suggested by Mr. Agarwala were to be accepted and the section were to be construed as being applicable to those transactions only which have a dual aspect, that is, buying by a dealer from a producer and the dealer selling those identical goods within the notified area, the object of the Act would be defeated, for in a large number of cases the transactions would halt at the stage of buying and the Committee in those cases would have no power to levy the fee on them. Why is a buyer or a seller or a buyer and seller required to be registered and why does the Act prevent those who have not registered themselves from effecting transactions in commercial crops unless the object was to regulate and control transactions in those commodities at all stages and in a manner preventing the exploitation of the producer ? The legislature had thus principally the producer in mind who should have a proper market where he can bring his goods for sale and where he can secure a fair deal and a fair price. The Act thus aims at transactions which such a producer would enter into with those who buy from him. The words "bought and sold" used in section 11(1) aim at those transactions whereunder a dealer buys from a producer who brings to the market his goods for sale. The transactions aimed at must be viewed in the sense in which the legislature intended it to be viewed, that is, as one transaction resulting in buying on the one hand and selling on the other. Such a construction is commendable because it is not only in consonance with the words used in section 11(1) but is consistent with the object of the Act as expressed through its various provisions. The construction on the other hand canvassed by the appellants is defeative of the purpose of the Act and should, unless we are compelled to accept it, be avoided. The construction which we are inclined to accept acquired some support from the fact that section 11 makes the purchaser and not the seller primarily responsible for payment of the fee and it is only when the purchaser cannot be identified that the seller is made liable.

Mr. Agarwala at first also urged that the fee under s. 11(1) amounted to a tax and that it was in fact a sales tax. But at the last moment he stated that he did not wish to press that contention and requested us not to express any opinion thereon. Since the contention is not pressed we need not express any opinion on that ques-

A tion and confine ourselves to the question as to the interpretation of the words "bought and sold" in that section.

In our view the construction placed by the High Court on s. 11(1) was a correct construction and therefore the respondent-committee had rightly charged the appellants with said fee.

B The appeals therefore fail and are dismissed with costs. One hearing fee.

R.K.P.S. *Appeals dismissed.*